



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1994

Mr. Mark B. Taylor  
City Attorney  
City of San Marcos  
City Hall  
630 E. Hopkins  
San Marcos, Texas 78666

OR94-900

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26755.

The City of San Marcos (the "city") received an open records request for a proposal the city received for an auctioneering contract. You first contend that the proposal comes under the protection of section 552.104 of the Government Code. Section 552.104 protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder."

The primary purpose of section 552.104 is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders.<sup>1</sup> See, e.g., Open Records Decision No. 463 (1987). A governmental body may withhold this type of information while its officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. Cf. Open Records Decision No. 170 (1977). However, section 552.104 does not ordinarily except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978). Because you state that the city has awarded the auctioneering contract, there is in this instance no ongoing competitive situation to which the information at issue relates. Consequently, section 552.104 does not apply to the requested information.

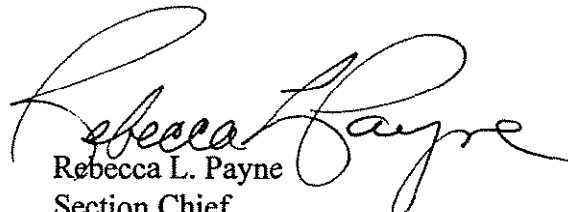
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<sup>1</sup>Thus, section 552.104 was not intended to protect the interests of private business entities that have submitted information to the governmental body.

You also suggest that the requested information may come under the protection of section 552.110 of the Government Code, which protects "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Because you made no specific argument as to why this exception applies, this office assumed that you sought an open records decision from this office pursuant to section 552.305 of the Government Code. Consequently, this office notified representatives of Lone Star Auctioneers, Inc. that we received your request for an open records decision regarding their proposal for the provision of auctioneering services to the city. In our letter to Mr. Ed Lanford, president of Lone Star Auctioneers, Inc., this office requested an explanation as to why portions of the company's proposal were excepted from public disclosure, with the caveat that failure to provide such an explanation within a reasonable time would result in this office instructing you to disclose the information.

More than fourteen (14) days have elapsed since this office issued the notice, but Lone Star Auctioneers, Inc. has failed to provide this office with any explanation as to why the requested documents should not be released. Consequently, we have no basis for applying section 552.110 or any other exception to required public disclosure to this information. *See* Open Records Decision No. 552 (1990). Because neither you nor Lone Star Auctioneers, Inc., have established why the requested information should be withheld, you should release the information at this time. If you have any questions regarding this letter, please contact our office.

Yours very truly,

  
Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/RWP/sbm

Ref.: ID# 26755

Enclosures: Submitted documents

cc: Mr. Rene Bates  
Rene Bates Auctioneers, Inc.  
Route 4  
McKinney, Texas 75070-9603  
(w/o enclosures)

Mr. Ed Lanford  
President  
Lone Star Auctioneers, Inc.  
1050 Forest Park Boulevard  
Fort Worth, Texas 76110  
(w/o enclosures)